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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,759	12/30/2003	Nathaniel Blake Scholl	249768082US	2699
25096	7590	10/31/2007		
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			EXAMINER RETTA, YEHDEGA	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/748,759

Applicant(s)

SCHOLL ET AL.

Examiner

Yehdega Retta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4 and 6-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, and 6-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)           | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948). | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)           | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is in response to amendment filed July 20, 2007. Applicant amended claims 1, 4, 6, 7, 9, 11, 12, 16, 22, and 25 and canceled claims 3 and 5. Claims 1, 2, 4, and 6-34 are currently pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4 and 6-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Calabria et al. (US 2005/0137939).

Regarding claims 1, 2, Calabria teaches an advertisement generators that automatically generates advertisement sets different algorithm (see [0052]-[0055] [0121]); each advertisement set having a keyword and an advertisement; a fee calculator that calculates fee amounts for advertisements based on anticipated profitability of the advertisement sets (see [0013], [0019] – [0023] an advertisement submitter that sends to an advertisement placement service a request to place the advertisement along with content associated with the keyword at the fee amount of an advertisement set; and an advertisement manager that receives from the advertisement generator advertisement sets, receives from the fee calculator a fee amount for each advertisement set, selects advertisement sets for which no conflicting advertisement set is currently submitted, and

provides to the advertisement submitter the selected advertisement sets that each have an advertisement, a keyword, and a fee amount (see [0035] – [0040], [0044]- [0047], [0109]).

Regarding claims 4, 7, 8, Calabria teaches wherein when multiple advertisement sets have the same keyword, the advertisement manager selects one of the multiple advertisement sets based on analysis of the likelihood of users selecting the advertisement when it is placed along with a content associated with the keyword; a database containing statistics relating to placements of advertisements and wherein the fee calculator determines anticipated profitability based on analysis of the statistics; wherein the statistics include average cost-per-click of an advertisement and average revenue-per-click (see [0120]-[0123],[0133]- [0147]).

Regarding claim 6, Calabria teaches multiple advertisement submitters where each advertisement submitter is associated with an advertisement placement service (see [0153]).

Regarding claims 9, 17-19, 22, 26-28 and 32 Calabria teaches automatically generating advertisement sets that specify an advertisement, a keyword, and a bid amount (see [0052]-[0055] [0121]); selecting advertisement sets for submission to an advertisement placement service such that a selected advertisement set does not conflict with a currently submitted advertisement set; submitting to the advertisement placement service a request to place advertisements in accordance with the selected advertisement sets; analyzing the effectiveness of the placed advertisements for each-the advertisement sets, the effectiveness of an advertisement being based on at least financial benefit of placing the advertisement; and selecting advertisement sets for placement of advertisements based on the analysis (see [0035] – [0040], [0044]- [0047], [0109]).

Regarding claims 10-16, 20, 21, 23-25, 29, 30 and 31, 33, 34, Calabria teaches the advertisement is placed with search results with a search term matching the keyword; generating advertisement sets based on frequency or desirability of keyword ([0054]); effectiveness is based on profit resulting from user selecting the advertisement; calculating and adjusting the amount based on advertising metrics (see [0120]-[0123], [0133]-[0147]).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 4, and 6-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cantrell (US 2002/0103698) teaches selecting ads and impression or clicks and calculating cost for the ad.

Feinberg (US 2001/0053999) teaches algorithms used by the content server to determine which advertisements or information are selected and transmitted to different users of a file.

Bronnimann et al. (US 2004/0044571) teaches an Internet advertisement listings provider that distributes advertisements in a bid-for-placement arrangement based on the revenue-efficiency of the advertisements from the bidding advertisers that calculates the revenue to the advertising distribution system by multiplying the click-through rate times the bid amount for each click-through.

Skinner (US 2003/0105677) teaches based on the data collected and parameters which the advertiser provides relating to the advertiser's economic factors, the system calculates a

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maximum acceptable bid for each search term. The system monitors the web for competitor's bids on an advertiser's search term and a place bids which fall below the maximum acceptable bid.

Pisaris-Henderson et al. (US 2004/0162757) teaches the rate of selection of the ad unit can be dependent on the advertiser specific advertising content therein, the method for determining the next advertiser in rotation may further include weighting based on both the bid amount and the rate of selection.

Cantrell (US 2002/0103698) teaches the click-through rate is one of the primary vehicles for determining advertising fees

Wiseman et al. (US 2005/0144069) teaches an advertiser viewing performance data such as keywords, clicks impressions, click through rate, average cost per click, cost, and average position.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Yehdega Retta  
Primary Examiner  
Art Unit 3622

YR